

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

LINDA L. KINGSLEY,)	
)	DOCKET NO.: PT-1997-140
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on November 5, 1998, in the City of Polson, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The taxpayer, Linda Kingsley, and her representative Kyle Karsten, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Jackie Ladner, supervising appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Section 3, Township 22 North, Range 20 West, County of Lake, State of Montana, Land and Improvements thereon. (Assessor's Code #3455).

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$67,000 for the land, \$39,060 for the older home, and \$277,330 for the new home.

4. The taxpayer appealed to the Lake County Tax Appeal Board requesting a reduction in value to \$19,675.50 for the land and \$33,591.60 for the older home and \$240,000 for the new home.

5. The County Board denied the appeal stating: "Market data for comparable property support DOR values at 1/1/96 date."

6. The taxpayer then appealed that decision to this Board stating:

Contract for new construction was a 1995 contract based on 1995 prices. Statements made by DOR were inaccurate and many facts and figures misconstrued or distorted. A professional in this field obviously needs to present this case on my behalf, just as the one for the Brd (sic). I was lead to

believe this was not the case.

TAXPAYER'S CONTENTIONS

The taxpayer contended that real estate values for properties in Lake County have been declining, although her agent, Mr. Karstens, indicated that since 1994 they have been fairly stable. She felt the DOR overvalued her property \$35,000 to \$40,000.

Mr. Karstens testified that the contract price to build the new home in 1996 was \$219,889 (Exhibit 1). He also stated that he believed the best indicator of value is the actual construction price. Ms. Kingsley added the additional \$20,000 for extra expenses such as landscaping and paving not covered in the contract. The home is a ranch style frame home with an attached three-car garage and finished basement. The main floor of the home is 2,200 square feet. The fireplace is a prefab fireplace that does not work well. The cabinets and countertops were not custom built. Ms. Kingsley stated she did not believe her home was above average.

Mr. Karstens testified the lot is in close proximity to the city limits but does not benefit from all city services. The lot does have city water but does not have city sewer. The property is serviced by a paved road maintained by the city. The lot has two residences on it,

each with its own septic system.

DOR'S CONTENTIONS

Ms. Ladner testified that the area surrounding the subject property is one of the older, more exclusive areas of Polson and that this is a superior property. She said the value for the new home, using the cost approach, was very close to the actual cost of construction presented by the taxpayer without the ECF (Economic Condition Factor). The DOR uses this economic adjustment factor to render a market value after a cost value has been established. She said the DOR designated the home to be a grade six, which is above average.

BOARD'S DISCUSSION

The taxpayer testified that she purchased the lot with the older home in 1991 for \$75,000. The new residence was constructed in 1995 and 1996 for \$219,000 with an additional \$20,000 for such things as landscaping and paving. The taxpayer has invested approximately \$315,000 in the subject property.

The DOR applied an ECF of 116% to the subject property. The International Association of Assessing Officers (IAAO) considers ECF the market adjustment factor.

The Department of Revenue's Book of General Evidence definition of ECF states:

The final step in the cost approach is ensuring that estimated values are consistent with the market. This is particularly important because the cost approach separately estimates land and building values and uses replacement costs, which reflects only the supply side of the market. Market adjustment factors are often required to adjust values obtained from the cost approach to the market. (IAAO, Pg. 360 & 311)

There was, however, no evidence or testimony provided by the DOR to indicate that the ECF applied was applicable to a property of the type, age, or condition of the subject property.

It is true, as a general rule, that the appraisal of the DOR is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a burden of providing documented evidence to support its assessed values. Western Airlines, Inc. v. Catherine J. Michunovich, et al, 149 Mont. 347, 428 P.2d 3, (1967).

Based upon the evidence and testimony presented at the hearing before this Board, the Board finds that the DOR provided evidence to support its values for the land but finds that its revised values for improvements should be adjusted by the removal of the ECF.

For the foregoing reasons, the Board concludes that the appeal shall be granted in part and denied in

part and the decision of the Lake County Tax Appeal Board is modified.

CONCLUSIONS OF LAW

1. The State Tax appeal Board has jurisdiction over this matter. **§15-2-302 MCA**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lake County by the Assessor of said County at the 1997 tax year value of \$67,060 for the land, as determined by the DOR, and at the improvement value of \$39,060 for the older home and \$239,080 for the new home which is consistent with the removal of the ECF of 116%.

Dated this 31st of December, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

(S E A L)

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this ____ day of December, 1998, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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